

Docket No. 6559

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I. INTRODUCTION

The Board has reviewed the petition and the accompanying documents and agrees that approval should be granted without hearing.

Based upon the petition and accompanying documents, we hereby make the following findings of fact.

1. TSI is a Delaware corporation authorized to provide telecommunications services in Vermont pursuant to a Certificate of Public Good granted by the Board on December 16, 1999, in Docket No. 6232. TSI filed for bankruptcy on May 21, 2001, and currently operates under the protection of Chapter 11 of the U.S. Bankruptcy Code. Petition at 1 and 4, and Exhibit A.

2. TAC is a recently formed Delaware corporation authorized to transact business as a foreign corporation in Vermont. TAC was formed specifically to facilitate the proposed funding and acquisition of TSI's Vermont operations. Petition at 3 and Certificate of Authority filed October 18, 2001.

3. In order to complete the proposed transactions, TAC has entered into an Asset Purchase Agreement with TSI, pursuant to which TAC will acquire substantially all of TSI's telecommunications assets and operations and existing customer base. Following completion of the transaction, TAC plans to operate under the name of "Teligent Services, Inc." and will continue to operate the same services pursuant to the same rates, terms, and conditions of services as currently provided by TSI to its customers. Accordingly the transaction should not cause any inconvenience for Vermont consumers. Petition at 6.

4. As a result of the asset acquisition, TSI will no longer operate as a telecommunications provider in Vermont and requests revocation of its CPG. In addition, TAC requests issuance of a CPG authorizing it to do business as a telecommunications provider in Vermont. Petition at 1 and Exhibit B, and letter from the Department dated October 5, 2001, at 1.

5. TAC proposes to provide all forms of telecommunications services on a resale basis throughout Vermont. Exhibit B at 3.

6. TAC does not currently provide telecommunications services in any other states. Exhibit B at 3.

7. TAC has provided the necessary documentation regarding management structure and financial information. Exhibit E.

8. TAC has not filed for bankruptcy and has never been the subject of an investigation by a state or federal authority. Exhibit B at 4.

9. The proposed transactions should result in a more efficient corporate structure with a renewed focus on its core markets, thus enhancing the ability of TAC to offer competitively priced services in the Vermont telecommunications marketplace and promoting the public interest. Petition at Exhibit A.

III. DISCUSSION

The proposed transaction requires approval by the Board under 30 V.S.A. § 109. Pursuant to 30 V.S.A. § 109, "a foreign corporation subject to the jurisdiction of the [Board], shall not make a sale or lease . . . in any one calendar year constituting ten percent or more of the company's property located within this state . . ." without approval of the Board. The statute conditions approval of a sale of assets upon a finding that the transaction will promote the public good (30 V.S.A. § 109). The standard is met in this case.

After reviewing the petition, we conclude that 30 V.S.A. § 109 applies to the sale of TSI's assets to TAC. We further conclude that the sale of assets will not affect the services existing Vermont customers of TSI now receive. The customers of TSI will be served by TAC under TSI's current tariff offerings. In addition, the sale of assets should allow former customers of TSI uninterrupted telecommunications services at the same rates, terms and conditions of service. The sale of assets, therefore, will promote the public good. For all of these reasons, we conclude that the proposed transaction meets the standards set forth in 30 V.S.A. § 109 and should be approved.

Petitioners have also requested that the Board revoke the CPG held by TSI, in that it will, as a result of the asset transfer no longer operate in Vermont. No opposition to this request has been raised. The Board finds the reasons articulated by the Petitioners in support of the request to be convincing. This finding, together with the fact that no opposition to the filing has been registered with the Board, leads us to conclude that TSI's CPG should be revoked. While 30 V.S.A. §§ 102(c) and 231(a) require that a hearing be held before revocation of a CPG is allowed, we note that Rule 56 of the V.R.C.P. provides that where no genuine issue of material fact exists, a hearing is not necessary. We find that the requirements of V.R.C.P. Rule 56 are met in this case and, therefore, grant the Petitioners' request without a hearing.

TAC will operate according to the tariff of TSI that has been reviewed and accepted by the Department and Board. TAC should file an identical tariff (with an appropriately updated effective date) to become effective after it receives a CPG and formal tariff filing requirements have been satisfied. This procedure is consistent with 30 V.S.A. § 225 and Board precedents. See, *e.g.*, *Petition of Coast International, Inc.*, Order of 11/21/91; *Petition of Richmond Cable Corp.*, Docket No. 5038, Order of 11/6/85; *Petition of Burlington Telephone Company, supra.* TAC

should file its formal tariff within thirty days of the issuance of a CPG.

Sections 102 and 231 of Title 30, V.S.A., require that a CPG be issued before a company can offer telephone service to the public in Vermont. Such entry regulation statutes were traditionally designed for two purposes. The first is to protect consumers against incompetent or dishonest businesses. The second was to protect existing providers by limiting or eliminating their competitors. See, e.g. Docket No. 5012, Petition of Burlington Telephone Company, Order of 5/27/86.

The first rationale for entry regulation -- "consumer protection" -- remains one of the Board's policy objectives. Having reviewed the petition of TAC and all related materials, the Board concludes that the evidence does not demonstrate that the technical, managerial and financial resources are inadequate. When combined with alternatives available in a competitive marketplace and recognizing that consumers are free to use another competitor's services with minimal transaction cost, we conclude that concerns for consumer protection have been sufficiently addressed. Concerns for consumer protection are, therefore, not cause for rejection of TAC's petition nor do they warrant an investigation at this time.

The second -- or "franchise protection" -- rationale was rejected by the Board, after careful consideration in Docket No. 4946. In that Docket's Order of February 21, 1986, the Board concluded that, despite all its dangers and inherent drawbacks, the public benefits of competition outweighed any flaws, and that competition should be permitted in Vermont's markets for message telephone service and other communications services.

Vermont policy, established by the Board and enunciated through the State Telecommunications Plan ("Plan") (adopted by the Department), has firmly supported opening the local exchange market to competition. This policy has been reaffirmed by the Board in Docket 5713, the Board's investigation into competition in the telecommunications arena and Docket 5909, in which the Board authorized Hyperion Telecommunications of Vermont, Inc. ("Hyperion") to provide local exchange competition.¹

The Board's support for competitive entry is consistent with the state's telecommunications policies as set out in the State Telecommunications Plan. That Plan clearly

1. Docket 5713, Order of 5/29/96 at 13 (later stages of that proceeding will further define the framework for telecommunications competition within the state); Docket 5909, Order of 1/14/97.

states that competition is the preferred strategy to achieve Vermont's goals of reasonable price, availability and high quality of service provided that there is adequate assurance that the needs of all consumers will be met. The Plan also encourages the Board to create a "framework to facilitate competition, while assuring affordable basic service rates, high quality of service, consumer protection, and universal service via interconnection agreements and Docket No. 5713 investigation and decisions."² The Board has moved to establish such a framework in various rulings over the last several years.

Federal law also applies to the broader questions of competitive entry. Under Section 253(a) of the Telecommunications Act of 1996 ("Act") which amended the Communications Act of 1934, states may not "prohibit or have the effect of prohibiting the ability of any entity to provide any interstate or intrastate telecommunications service." States retain authority, however, to:

impose, on a competitively neutral basis and consistent with Section 254 [47 U.S.C.A. § 254], requirements necessary to preserve and advance universal service, protect the public safety and welfare, ensure the continued quality of telecommunications services, and safeguard the rights of consumers.³

Thus, federal law makes clear that states cannot bar competitive entry. State commissions may still require new service providers to obtain franchises (or, in Vermont, CPGs), although they may not use that authority to prohibit all competitive entry.⁴ Vermont also may continue to impose competitively neutral conditions to achieve the purposes enunciated in Section 253(b).

At the present time, however, the Board has not fully investigated the conditions that should apply to entry into local exchange competition. In Docket 5909, the Board concluded that, in general, conditions related to competitive entry could be deferred to Docket 5713 (and its successor dockets). In Docket 5909, the Board included a specific condition in Hyperion's CPG making clear that Hyperion must comply with any conditions related to competitive entry imposed in subsequent Board proceedings. The Board sees no reason to deviate from that policy here and recommends inclusion of a similar provision in TAC's CPG.

2. Vermont Telecommunications Plan (dated December 1996) at iii.

3. 47 U.S.C.A. § 253(b).

4. *In the Matter of Classic Telephone, Inc.*, Memorandum Opinion and Order, FCC CCBPol 96-10 at paragraph 28 (October 1, 1996).

TAC should also be aware of the Board's policy regarding the provision of operator services, should the Company, in the future choose to offer these services. As a substantive matter, the Board has previously found that, for carriers such as TAC that do not possess market power, there is little need for cost-of-service or rate-of-return regulation in order to meet the statutory criterion of just and reasonable rates. There is an exception regarding regulation of rates, however, with respect to rates for operator services. In our Order of 1/6/95 in Docket No. 5566, Generic Investigation into the Regulation of Public Telephone and Operator Service Providers in Vermont, we noted that "customers who are not expert in the rapidly changing field of telecommunications . . . stand to be taken advantage of in an imperfect market, where rates are unregulated, may be extraordinarily high and may be incurred by the end user without the equivalent of his knowledgeable consent." Docket No. 5566, Order of 1/6/95 at 101. Consequently, we mandated rate caps for operator services, set at the rates charged by New England Telephone and Telegraph Company, now known as Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"). No reseller may authorize or bill surcharges not set out in Verizon's tariff. We limited this requirement, however, as follows: "(1) the rate cap shall apply to calls (except dial-around calls) made from aggregator and other transient locations; (2) the rate cap shall not apply to calls from those locations where the subscriber selecting the presubscribed OSP carrier is also the person or entity who will be paying the bill; and (3) the rate cap will not apply to dial-around calls, which involve services selected by the caller and outside the control of the presubscribed AOS provider." *Id.*

Additionally, TAC should be aware of the Board's policy in connection with the provision of prepaid calling card service. The Board has imposed such a requirement on new entrants into the Vermont market that provide debit prepaid calling card services. *See* C.P.G. No. 145, Order of 7/13/94, and C.P.G. No. 146, Order of 8/17/94. As we noted in our Orders in C.P.G. Nos. 145 and 146, the public utilities commissions of several states have expressed concern about the potential risks to consumers associated with payment in advance of receipt of service, and we have the same concern.⁵ Consequently, we ordered World Telecom Group and Quest

5. In this regard, we note that the DPS has asked several other prospective providers of debit cards to comply with more than 30 separate suggested requirements designed to protect consumers. *See, e.g.,* C.P.G. #156, Petition of IDB WorldCom Services, Inc., Letter from DPS to IDB WorldCom Services, Inc. dated May 26, 1994. In its letter to IDB WorldCom, the DPS states that its suggested requirements are "merely a

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Telecommunications Inc. to post a bond, payable to the Board, in an amount equal to their projected Vermont intrastate revenues for the first 12 months of operation. We also stated that we would examine the issue of whether this requirement should be instituted on an industry-wide basis in our informal rulemaking proceeding.

We make a distinction, however, between new entrants into the Vermont market that provide only debit card service, and long-term participants that offer a multitude of services and that simply seek to add debit card service to their choice of service offerings. For this latter group, we do not impose a bond requirement, on the theory that the provider is already established in Vermont, offers several services that are provided on an on-going basis, and would be unlikely to "take the money and run."

Since we do not know how much of its business will be devoted to prepaid calling card services, we conclude that the most sensible approach is to inform TAC that should it decide to include the provision of debit cards or other prepaid services among its service offerings, it will be required to post a bond, payable to the Board, in an amount equal to its projected Vermont intrastate revenues from its prepaid services, for the first 12 months of operation. This approach will be fair to TAC, fair to the public, and consistent with the theory that underlies the Board's treatment of other telecommunications providers offering debit card services.

IV. CONCLUSIONS

The sale of assets of TSI to TAC, the revocation of TSI's CPG and the issuance of a new CPG to TAC, should be approved because the transactions will promote the public good of the State of Vermont.

V. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The sale of assets of Teligent Services, Inc. to TAC License Corp., will promote the

5. (...continued)

guideline to certain consumer protection concerns" and are not required by the Public Service Board. Id. at 3. We confirm that we have not endorsed the requirements suggested by the DPS. However, we will review the DPS' proposed requirements and, if appropriate, may consider including some of them in our draft rules.

public good and, therefore, is approved.

2. Petitioners shall file a letter notifying the Board of the completion of the transactions within one week of such completion.

3. A Certificate of consent to the sale of assets of Teligent Services, Inc. to TAC License Corp., shall be issued.

4. The provision of intrastate telecommunications service by TAC License Corp. will promote the general good of the State of Vermont pursuant to the provisions of 30 V.S.A. §§ 102 and 231. A certificate of public good shall be issued to that effect, subject to the applicable terms and conditions.

5. TAC License Corp. shall file a tariff, which duplicates the tariff of Teligent Services, Inc., currently on file with the Board, for intrastate service within 30 days after completion of the transaction.

6. Effective with the approval of TAC License Corp.'s tariff, the CPG issued to Teligent Services, Inc. on December 16, 1999, in Docket No. 6232, shall be considered revoked.

7. If TAC License Corp. at any time in the future proposes to offer operator services, it shall be required to comply with the Board's Order of 1/6/95 in Docket No. 5566, *Generic Investigation into the Regulation of Public Telephone and Alternative Operator Services in Vermont*, and any future orders in that docket.

8. If TAC License Corp. intends to do business in the State of Vermont under a name that differs from the name in use on the date of the Order in this Docket, it shall file a notice of the new trade name with the Clerk of the Board and the Department of Public Service at least fifteen (15) days before commencing business under the new trade name.⁶

9. If TAC License Corp. at any time in the future proposes to offer prepaid calling card services, it shall post a bond, payable to the Board, in an amount equivalent to its projected intrastate revenues from its prepaid calling card service for the first twelve (12) months of operation.

10. TAC License Corp. shall be subject to all rules and orders lawfully adopted or to be adopted by the Board, and its certificate of public good shall incorporate those rules and orders by

6. For a Corporate name change, see 11 V.S.A. § 401 and 30 V.S.A. § 231. Petitioners may wish to contact the Clerk of the Board for assistance.

reference. TAC License Corp.'s CPG shall be subject to revocation upon good cause, including a substantial or continuous failure to abide by its material terms.

DATED at Montpelier, Vermont, this 20th day of November, 2001.

<u>s/Michael H. Dworkin</u>)	
)	PUBLIC SERVICE
)	
<u>s/David C. Coen</u>)	BOARD
)	
)	OF VERMONT
<u>s/John D. Burke</u>)	

OFFICE OF THE CLERK

Filed: November 20, 2001

Attest: s/Susan M. Hudson

Clerk of the Board

NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any technical errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us).

Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.